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8
9 BEFORE THE DEPARTMENT OF CORPORATIONS
10 OF THE STATE OF CALIFORNIA
11

12 In the Matter of) CASE NO.
)
13 THE CALIFORNIA CORPORATIONS) FILE NO. 923-3835
14 COMMISSIONER,)
) STATEMENT IN SUPPORT OF ORDER TO
15 Complainant,) DISCONTINUE VIOLATIONS PURSUANT
16 v.) TO CORPORATIONS CODE SECTION 25249
) AND COMMISSIONER'S INTENTION TO
17 FAME RENAISSANCE HANCOCK) MAKE ORDER FINAL
18 VENTURE, LLC.)
)
19 Respondent.)
)
20)
21)

22 WAYNE STRUMPFER, the Acting California Corporations Commissioner
23 ("Commissioner") of the Department of Corporations ("Department") alleges and charges as follows:
24 FAME RENAISSANCE HANCOCK VENTURE, LLC. ("FAME"), holds a valid and unrevoked
25 investment adviser certificate issued by the Commissioner pursuant to Corporations Code section
26 25230 on June 2, 1999. FAME is in the investment adviser business and is located at 2270 South
27 Harvard Boulevard, Los Angeles, CA 90018 with a mailing address of 2270 South Harvard
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1 Boulevard, Los Angeles, CA 90018. Steven D. Johnson is the president and chief financial officer
2 of the corporation. Michael J. Fourticq is a general partner of FAME.

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4 1. On or about July 12, 2002 and June 9, 2004, the Department commenced regulatory
5 examinations of FAME's investment adviser business ("the examinations"). The examinations
6 revealed violations of the books and records provisions of the Corporate Securities Law of 1968,
7 Corporations Code section 25000 et seq., and the regulations thereunder found at California Code of
8 Regulations, title 10, section 260.000 et seq.

9 2. These violations consisted of FAME's failure to keep true, accurate and current books
10 and records, as well as minimum capitalization requirements including; 1) failing to maintain an
11 accurate general ledger accounting system that is in accordance with generally accepted accounting
12 principles ("GAAP"); 2) failing to file annual financial reports; 3) failure to maintain minimum
13 capital requirements and 4) failure to obtain a required examination and verification of clients' funds
14 and securities by a certified public accountant at least once a year

15 3. Corporations Code section 25241 provides that investment advisers are required to
16 maintain books and records that are subject to examinations by the Commissioner. Section 25241
17 provides, in relevant part, as follows:

- 18 "(a) Every...investment adviser licensed under Section 25230 shall make and keep such
19 accounts, correspondence, memoranda, papers, books, and other records and shall file such
20 financial and other reports as the commissioner by rule requires, subject to the limitations of .
21 . . Section 222 of the Investment Advisers Act of 1940 with respect to investment advisers.
22 (b) All records so required shall be preserved for the time specified in the rule.
23 (c) All records referred to in this section are subject at any time and from time to time to such
24 reasonable periodic, special, or other examinations by the commissioner, within or without
25 this state, as the commissioner deems necessary or appropriate in the public interest or for the
26 protection of investors...."

27 4. California Code of Regulations, title 10, section 260.241.3 sets forth the specific books
28 and records that are required to be maintained by investment advisers and provides as follows:

- 29 "(a) Every licensed investment adviser shall make and keep true, accurate and current the
30 following books and records relating to such person's investment advisory business:...

- 31 (2) General and auxiliary ledgers (or other comparable records) reflecting asset, liability,
32 reserve, capital, income and expense accounts...

(c) Every licensed investment adviser who renders any investment supervisory or management service to any client shall, with respect to the portfolio being supervised or managed and to the extent that the information is reasonably available to or obtainable by the investment adviser, make and keep true, accurate and current:

(1) Records showing separately for each such client the securities purchased and sold, and the date, amount and price of each such purchase or sale.

(2) For each security in which any such client has a current position, information from which the investment adviser can promptly furnish the name of each such client, and the current amount of the interest of such client...

(j) Any investment adviser who is subject to the minimum financial requirements of Section 260.237.1 or Section 260.237.2 as applicable, shall, in addition to the records otherwise required under this section, maintain a record of the proof of money balances of all ledger accounts in the form of trial balances and a record of the computations of net capitals and aggregate indebtedness pursuant to Section 260.237.1 of these rules or minimum net worth pursuant to Section 230.237.2 of these rules (as of the trial balance date). The trial balances and computations shall be prepared currently at least once a month."

5. The Department's examiner found during the regulatory examinations on or about July 12, 2002, and June 9, 2004, that FAME's accounting records were not accurate as although they indicated that FAME had a capital value of \$496,593, the records did not reflect the investment in the fund as an asset. The equity section of the balance sheet also did not contain accounts for the member capital contributions. FAME therefore failed to maintain an accurate general ledger in violation of California Code of Regulations, title 10, section 260.241.3, subdivision (a)(2). The examinations also revealed that a trial balance computation of net capital was not prepared each month in violation of section 260.241.3, subdivision (j) and that no detailed records of the clients' securities transactions were being maintained in violation of section 260.241.3, subdivision (c).

6. FAME has also failed to file annual financial reports. California Code of Regulations section 260.241.2(a) requires the filing of an annual report by investment advisers, who like FAME have custody of clients' funds or securities. California Code of Regulations, section 260.241.2, subdivision (a)(2), provides as follows:

"(a) General Rule. Subject to the provisions of subsection (c) of this section, ...every licensed investment adviser subject to the provisions of Section 260.237.1 or Section 260.237.2, as applicable, of these rules, shall file an annual financial report containing the information required by a form or forms to be supplied or approved by the Commissioner, as follows:

1 ... (2) The annual report for investment advisers shall contain a Statement of Financial
2 Condition. Supporting schedules shall contain computations of net capitals, aggregate
3 indebtedness and ratios required under Section 260.237.1 or minimum financial requirements
4 required under Section 260.237.2, as applicable....”

5 7. California Code of Regulations sections 260.237.1 provides in pertinent part as
6 follows:

7 “An investment adviser licensed prior to 03/01/03 may comply with either the minimum
8 financial requirements in this section or in Section 260.237.2 until January 1, 2005, at which
9 time this section shall become inoperative and an investment adviser shall comply with the
10 minimum financial requirements in Section 260.237.2

11 (a) No investment adviser who has any power of attorney from any investment advisory
12 client to execute transactions or has regular or periodic custody of any of its investment
13 advisory clients securities or funds...shall permit its total aggregate indebtedness to exceed
14 500% of its tangible net capital or permit its current aggregate indebtedness to exceed its
15 current net capital; and,

16 (1) The investment adviser shall at all times have and maintain tangible net capital of not
17 less than \$25,000.00; or,

18 (2) If the investment adviser has any power of attorney from any investment advisory
19 client to execute transactions and does not have regular or periodic custody or possession of
20 any of its investment advisory clients’ securities or funds...it shall at all times have and
21 maintain tangible net capital of not less than \$5,000.00....

22 (c) Definitions. For purposes of subsection (a) of this section, all financial information shall
23 be determined in accordance with generally accepted accounting principles....”

24 8. The alternative minimum financial requirement California Code of Regulations Section
25 260.237.2 provides in pertinent part as follows:

26 “An investment adviser licensed prior to 03/01/03 may comply with either the minimum
27 financial requirements in this section or in Section 260.237.1 until January 1, 2005 at which
28 time section 260.237.1 shall become inoperative and an investment adviser shall comply with
the minimum financial requirements in this section

(a) Every investment adviser who has custody of client funds or securities, shall maintain at
all times a minimum net worth of \$35,000.

(d) For purposes of this rule, the term “net worth” shall mean an excess of assets over
liabilities, as determined by generally accepted accounting principles....”

9. FAME has power of attorney or discretionary power to execute transactions in the
brokerage accounts of its investment adviser clients and has custody and possession of clients’ funds
and securities. Therefore, FAME is required to meet the capital requirements provided for under
either California Code of Regulations Section 260.237.1 or section 260.237.2, and to show proof of

1 compliance with these regulations by filing annual financial reports required by section 260.241.2
2 and failed to do so at the examinations.

3 10. As of July 29, 2005, the examinations revealed FAME has failed to submit annual
4 financial reports that comply with GAAP for the years 2002 through 2004, in violation California
5 Code of Regulations section 260.241.2.

6 11. The examination of July 12, 2002 revealed FAME had a tangible net capital deficiency of
7 \$99,140.40 and a current net capital deficiency of \$55,422 as of September 30, 2001. The
8 examination on June 9, 2004, revealed that as of April 30, 2004, FAME had a current net capital
9 deficiency of \$430,163, and that its aggregate indebtedness exceeded 500% of its tangible net capital
10 by \$275,118 in violation of the requirements of section 260237.1. Net capital was deficient by
11 \$6,430 under the requirements of section 260.237.2.

12 12. California Code of Regulations section 260.237 provides that it shall constitute a
13 fraudulent, deceptive or manipulative act under Corporations Code Section 25235, for any
14 investment adviser who has custody or possession of any funds or securities in which any client has
15 any beneficial interest to do any act or take any action, directly or indirectly, with respect to any such
16 funds or securities, unless:

17 (e) all funds and securities of clients are verified by actual examination at least once during
18 each calendar year by an independent certified public accountant or public accountant at a
19 time which shall be chosen by the accountant without prior notice to the investment adviser.
20 A certificate of the accounting stating that such person has made an examination of the funds
and securities, and describing the nature and extent of the examination, shall be filed with the
Commissioner promptly after each examination.

21 13. The examinations revealed that FAME had custody and control of clients' funds and
22 failed to have annual examinations of clients' funds and securities by a public accountant conducted
23 in compliance with Corporations Code section 25235 for the years 2002 through 2004.

24 14. On December 19, 2002, the Department sent Michael J. Fourticq of FAME a
25 regulatory letter notifying FAME of various violations discovered during the July 12, 2002,
26 examination as noted above, including violations of California Code of Sections 260.241.2 and
27 260.241.3. On August 9, 2004, the Department sent Michael J. Fouticq of FAME another letter
28 notifying FAME of the various violations discovered during the June 9, 2004 examination as noted

1 above. The Department's letters also requested that in response FAME set forth the action taken to
2 establish a general ledger accounting system that is in accordance with GAAP. The Department
3 letters also noted the failure to file financial reports and requested copies of annual financial reports
4 for the year-ends 2002 and 2003, a verification form to accompany both reports, and a confirmation
5 that FAME would file annual reports as required in the future and comply with adequate
6 capitalization and record keeping requirements.

7 15. In a letters dated October 15, 2004, Steven Johnson of FAME responded to the
8 Department's letter claiming that it had corrected accounting procedures and record keeping and
9 maintained adequate capitalization. However, in a responding letter to Mr. Johnson from the
10 Department dated December 16, 2004, FAME was notified that the documents and reports that had
11 been requested had not been provided and the examination had revealed that there had not been
12 adequate capitalization and requesting that FAME promptly submit the documents requested
13 including explanation of the corrective action taken regarding net worth, the trial balance or balance
14 income sheet and copies of brokerage accounts with a reconciliation of each clients account and
15 confirmation that annual CPA inspections of clients funds and securities would occur. Although the
16 letter requested a response from FAME by January 10, 2005, no response has been received from
17 FAME up to an including July 27, 2005.

18 16. Corporations Code section 25249 authorizes the Commissioner to issue an order
19 directing any broker-dealer or investment adviser to discontinue any violation of the Corporations
20 Code and any rules promulgated thereunder. Specifically, Corporations Code section 25249
21 provides, in relevant part:

22 "If, after examination or investigation, the commissioner has reasonable grounds to
23 believe that any broker-dealer or investment adviser has violated any law or rule
24 binding upon it, the commissioner shall, by written order addressed to the broker-dealer or
25 investment adviser, direct the discontinuance of the violation. The order
26 shall be effective immediately, but shall not become final except in accordance with the
27 provisions of Section 25251."

28 17. Corporations Code section 25251 provides:

- (a) No order issued pursuant to Section 25249 or 25250 may become final except
after notice to the affected broker-dealer or investment adviser of the
commissioner's intention to make the order final and of the reasons for the

1 finding. The commissioner shall also notify the broker-dealer or investment
2 adviser that upon receiving a request the matter shall be set for hearing to
3 commence within 15 business days after receipt of the request. The broker-
4 dealer or investment adviser may consent to have the hearing commence at a
5 later date. If no hearing is requested within 30 days after the mailing or service
6 of the required notice, and none is ordered by the commissioner, the order may
7 become final without a hearing and the broker-dealer or investment adviser shall
8 immediately discontinue the practices named in the order. If a hearing is
9 requested or ordered, it shall be held in accordance with the provisions of the
10 Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of
11 Part 1 of Division 3 of Title 2 of the Government Code), and the commissioner
12 shall have all of the powers granted under that act. If, upon the conclusion of the
13 hearing, it appears to the commissioner that the broker-dealer or investment
14 adviser is conducting business in an unsafe or injurious manner or is violating
15 any law of this state or any rule binding upon it, the commissioner shall make the
16 order of discontinuance final and the broker-dealer or investment adviser shall
17 immediately discontinue the practices named in the order.

- 18 (b) The broker-dealer or investment adviser may within 10 days after an order is
19 made final commence an action to restrain enforcement of the order. If the
20 enforcement of the order is not enjoined within 10 days by the court in which the
21 action is brought, the broker-dealer or investment adviser shall comply with the
22 order.

23 18. By reason of the foregoing, FAME has violated California Code of Regulations sections
24 260.241.2, 260.241.3, 260.237 and 260.237.1 or 260.237.2 justifying the issuance of an Order to
25 Discontinue Violations. FAME, as a licensee, was obligated to have knowledge of, and to comply
26 with, the provisions of the Corporations Code and the regulations thereunder to maintain its
27 investment adviser certificate.

28 19. FAME violated California Code of Regulations, title 10, section 260.241.2, subdivision
(a) by failing to file annual financial reports for years 2002 through 2004, section 260.241.3, by
failing to properly maintain a general ledger, keep records of securities purchased or sold for each
client and maintain trial balance ledgers showing the computation of net capital and indebtedness
every month. Fame also violated section 260.237 (e) by failing to obtain a required examination and
verification of clients fund and securities by a public accountant at least once a year and section
260.237.1 or 260.237.2 by failing to maintain minimum net worth and capital requirements.
Therefore, pursuant to Corporations Code section 25249, the Commissioner intends to issue an order
directing FAME to discontinue these violations.

1 WHEREFORE, good cause showing, and pursuant to Corporations Code section 25251, the
2 California Corporations Commissioner hereby notifies FAME of its intention to make final the
3 Order to Discontinue Violations Pursuant to Corporations Code section 25249 issued on July 29,
4 2005.

5 Dated: August 2, 2005
6 San Francisco, California

WAYNE STRUMPFER
Acting California Corporations Commissioner

7 By: _____
8 KIRK WALLACE
9 Corporations Counsel
10 Enforcement Division
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